

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
 ) Chapter 11  
PG&E CORPORATION AND PACIFIC )  
GAS AND ELECTRIC COMPANY ) San Francisco, California  
 ) Tuesday, December 15, 2020  
Debtor. ) 10:00 AM  
 )

REORGANIZED DEBTORS' TWENTY-  
FIFTH OMNIBUS OBJECTION TO  
CLAIMS (AMENDED AND  
SUPERSEDED CLAIMS) FILED BY  
PG&E CORPORATION [9418]

REORGANIZED DEBTORS' TWENTY-  
SIXTH OMNIBUS OBJECTION TO  
CLAIMS (DUPLICATIVE CLAIMS)  
FILED BY PG&E CORPORATION  
[9421]

REORGANIZED DEBTORS'  
TWENTY-SEVENTH OMNIBUS  
OBJECTION TO CLAIMS  
(INCORRECT DEBTOR CLAIMS)  
FILED BY PG&E CORPORATION  
[9424]

REORGANIZED DEBTORS'  
TWENTY-EIGHTH OMNIBUS  
OBJECTION TO CLAIMS (BOOKS  
AND RECORDS CLAIMS) FILED BY  
PG&E CORPORATION [9427]

REORGANIZED DEBTORS'  
TWENTY-NINTH OMNIBUS  
OBJECTION TO CLAIMS  
(SATISFIED CLAIMS) PG&E  
CORPORATION [9430]

REORGANIZED DEBTORS'  
THIRTIETH OMNIBUS OBJECTION  
TO CLAIMS (NO LIABILITY  
CLAIMS) FILED BY  
PG&E CORPORATION [9433]

1 REORGANIZED DEBTORS'  
THIRTY-FIRST OMNIBUS  
2 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
3 PG&E CORPORATION [9436]

4 REORGANIZED DEBTORS'  
THIRTY-SECOND OMNIBUS  
5 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
6 PG&E CORPORATION [9439]

7 REORGANIZED DEBTORS'  
THIRTY-THIRD OMNIBUS  
8 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
9 PG&E CORPORATION [9441]

10 REORGANIZED DEBTORS'  
THIRTY-FOURTH OMNIBUS  
11 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
12 PG&E CORPORATION [9443]

13 REORGANIZED DEBTORS'  
THIRTY-FIFTH OMNIBUS  
14 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
15 PG&E CORPORATION [9445]

16 REORGANIZED DEBTORS'  
THIRTY-SIXTH OMNIBUS  
17 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
18 PG&E CORPORATION [9447]

19 REORGANIZED DEBTORS'  
THIRTY-SEVENTH OMNIBUS  
20 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
21 PG&E CORPORATION [9449]

22 REORGANIZED DEBTORS'  
THIRTY-EIGHTH OMNIBUS  
23 OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
24 PG&E CORPORATION [9451]

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REORGANIZED DEBTORS'  
THIRTY-NINTH OMNIBUS  
OBJECTION TO CLAIMS (CUSTOMER  
NO LIABILITY CLAIMS) FILED BY  
PG&E CORPORATION [9453]

MOTION PURSUANT TO FED. R.  
BANKR. PROC. 7015 AND 7017 TO  
JOIN REAL PARTY IN INTEREST  
FOR CLAIM PREVIOUSLY FILED;  
OR, IN THE ALTERNATIVE, TO  
ENLARGE TIME TO FILE PROOF OF  
CLAIM PURSUANT TO FED. R.  
BANKR PROC. 9006(B)(1) FILED  
BY MOLIN-WILCOXEN CAMP FIRE  
VICTIMS GROUP [9481]

SECURITIES LEAD PLAINTIFF'S  
MOTION PURSUANT TO BANKRUPTCY  
CODE SECTIONS 503(B)(3)(D)  
AND 503(B)(4) FOR ALLOWANCE  
AND PAYMENT OF FEES AND  
EXPENSES FILED BY SECURITIES  
LEAD PLAINTIFF AND THE  
PROPOSED CLASS [8950]

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Reorganized  
Debtors:

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17 Court Recorder:

LORENA PARADA/ANKEY THOMAS  
United States Bankruptcy  
Court  
450 Golden Gate Avenue  
San Francisco, CA 94102

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25 Proceedings recorded by electronic sound recording;  
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SAN FRANCISCO, CALIFORNIA, TUESDAY, DECEMBER 15, 2020, 10:00 AM

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(Call to order of the Court.)

THE COURT REPORTER: Court is now in session. The Honorable Dennis Montali presiding. Calling the matter of PG&E Corporation.

One moment, Your Honor, while I bring in Ms. Silveira in.

MS. SILVEIRA: Good morning, Your Honor.

THE COURT: Good morning, Ms. Silveira. Can you hear me?

MS. SILVEIRA: Yes.

THE COURT: Okay. Just state your appearance for the record.

MS. SILVEIRA: Dara Silveira, Keller Benvenutti Kim, on behalf of the reorganized debtors.

THE COURT: Okay. Ms. Silveira, you can --

Well, let me make an announcement for all parties on the call, or on the hearing. The debtor had a number of omnibus objections on originally for today, and only one, party by the name of Elor, has the matter been left for today. Every other so-called omnibus objection has been continued to dates either in January or March.

Ms. Silveira, have I got it right? Have you got everybody accounted for that way, one or the other?

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1 MS. SILVEIRA: Yes. Yes, Your Honor.

2 THE COURT: Okay. So if there is anyone who's raising  
3 a hand because you think you intended to be heard today on the  
4 omnibus objection, I'm not going to call on you because we're  
5 not dealing with that. If there is someone signed in today who  
6 is appearing for Yair, Y-A-I-R, Elor, E-L-O-R, please raise  
7 your hand and I'll identify -- I'll call you and bring you in.

8 Now, I see a Tayisha Jeffy (phonetic) with a hand up.

9 Ms. Jeffy, if you are not on the Elor matter, please  
10 take down your hand because I don't intend to call on you.

11 All right. Ms. Silveira, I reviewed the Elor  
12 objection. I'm not sure what to make of it. Do you have any  
13 indication of what's behind this claim?

14 MS. SILVEIRA: Your Honor, to the best of my  
15 understanding, Mr. Elor is taking issue with the debtors'  
16 rates, not necessarily with respect to the rates he himself is  
17 being charged; it seems to me slightly more generally. He  
18 makes some reference to being on disability, but it wasn't  
19 clear, from the face of the response, whether that was with  
20 respect to him or someone else.

21 As we laid out in the thirty-third omnibus objection,  
22 we were able to confirm that Mr. Elor was or is a customer but  
23 have not identified any pre-petition billing issues, CPUC  
24 complaints, or any other pre-petition claims, so it's our  
25 position that there's no basis for liability, and the response

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as we've provided doesn't lay one out.

THE COURT: Okay. Well, I reviewed the claim and also the handwritten attachment, and I sort of came to the conclusion. I'm going to go ahead and sustain the objection because it doesn't appear to be a recognizable claim.

And if anyone is listening on behalf of Mr. Elor, Mr. and Mrs. Elor, they presumably can take any grievance that they have about claims generally, or rates generally, rather, to the Public Utilities Commissioner directed at the company. It doesn't seem to -- there doesn't seem to be any basis for the claim being treated as one of the claims being held under the confirmed plan.

So with that, we can go ahead and process that in the normal course, and that will be the end of that, okay?

MS. SILVEIRA: Yes. Yes, Your Honor. Thank you very much.

THE COURT: Thank you. And we're not going to keep you on the screen, unless you're going to be participating in today's motion, are you?

MS. SILVEIRA: No, Your Honor, I wouldn't.

THE COURT: Okay, then. We're going to put you back in the audience, and you're free to go. Thank you for your help on --

MS. SILVEIRA: Thank you.

THE COURT: And thank you for all your coordination of

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1 all the numerous omnibus claims; that's quite a handful.

2 MS. SILVEIRA: Certainly, Your Honor. Thank you very  
3 much.

4 THE COURT: Thank you.

5 MS. SILVEIRA: Bye.

6 THE COURT: All right. For everyone else watching,  
7 the only matter on for the calendar now is the so-called 503  
8 motion, and Ms. Parada will bring in the principal counsel to  
9 argue that motion, and I'll see if we've got everybody  
10 accounted for there.

11 Mr. Karotkin, good morning. Happy holidays.

12 MR. KAROTKIN: Yes, to you, too, sir.

13 I think Ms. Liou will be handling the main argument  
14 for the debtors.

15 THE COURT: Oh, not Mr. Slack?

16 MR. KAROTKIN: I'd like to remain, if we could bring  
17 her in as well?

18 THE COURT: Sure. I thought Mr. Slack would be here.

19 All right. Mr. Etkin, good morning.

20 MR. ETKIN: Good morning, Your Honor.

21 THE COURT: And is -- Ms. Liou, good morning.

22 MS. LIOU: Hi. Good morning, Your Honor.

23 THE COURT: And Mr. Etkin, is Mr. Dubbs coming in  
24 today, or not?

25 MR. ETKIN: Mr. Dubbs is coming in as well, Your



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1 Honor. I think I'll probably be handling it primarily, but if  
2 it's okay with the Court, if we could bring Mr. Dubbs in as  
3 well, that would be helpful.

4 THE COURT: Well, that's what we were expecting. Ms.  
5 Parada, you do have him in the audience, don't you?

6 THE COURT REPORTER: Your Honor, I do not see Mr.  
7 Dubbs, unless he signed in in a different name; if he could  
8 raise a hand.

9 THE COURT: Mr. Dubbs, are you incognito, under a  
10 phone number rather than a name? There you go. We'll just --  
11 I thought we had a hand go up.

12 THE COURT REPORTER: Yes, and it -- and then it's  
13 lowered. I don't see a hand raised for Mr. Dubbs.

14 THE COURT: Well, I saw one go up again and then down  
15 again. Hold on everybody.

16 Mr. Dubbs, are you going to join us or not today?  
17 Okay. Hand up again, but took it down again. Okay.

18 What did you do, scare him off, Mr. Karotkin and Ms.  
19 Liou? What did you do to your opponent here?

20 All right. Mr. Dubbs, one more try. Please put up  
21 your hand if you want to come in to the courtroom.

22 Well, Mr. Etkin, you're going to get the duty, I  
23 think.

24 MR. ETKIN: I think that he might be having technical  
25 difficulties, Your Honor, but unfortunately, I can't help him

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1 with that.

2 THE COURT: Well, as we know, I've had my share of  
3 technical difficulties; keep my fingers crossed today. Well,  
4 let's just wait a minute and see.

5 Are you in touch with him directly by a cell phone or  
6 a text?

7 MR. ETKIN: Your Honor, I spoke with him earlier this  
8 morning. I can certainly try to send him an email, but --

9 THE COURT: Well, if you want to call him on a  
10 landline or something, I mean, I don't mind waiting.

11 MR. ETKIN: Okay. I appreciate that, Your Honor. Let  
12 me give that a try. Excuse me for one moment.

13 THE COURT: Yeah, you might want to turn your mic off,  
14 so we don't listen to you.

15 MR. ETKIN: Yeah.

16 THE COURT: Well, Mr. Karotkin, you wanted to stay on  
17 the screen for the argument?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: Okay. All right. Well, you can both  
20 stand down for a minute and we'll just give him a little bit of  
21 time, here.

22 MR. ETKIN: He has the hand-raise feature, so I can't  
23 offer an explanation as to why that's not working out.

24 THE COURT: Well, hold on.

25 Okay. Someone in your office there --

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1 MR. ETKIN: We asked --

2 THE COURT: -- (audio interference) --

3 MR. ETKIN: I actually tried to get this problem fixed  
4 this morning, but obviously was unsuccessful. I appreciate the  
5 Court's generosity with its time.

6 THE COURT: Well, maybe you have a teenager somewhere  
7 in the house. They can fix it.

8 There you go. There's your name. All right.

9 All right. For Mr. Dubbs and Mr. Etkin, you saw my  
10 order, I trust, and therefore you've got a half an hour, and I  
11 assume you want to save a portion of that for rebuttal, and Ms.  
12 Liou is going to argue for the debtors. How much time shall we  
13 reserve for you?

14 MR. ETKIN: Your Honor, we'd like to reserve ten  
15 minutes for rebuttal, please.

16 THE COURT: Okay. Okay. You're up.

17 MR. ETKIN: Okay. Thank you, Your Honor.

18 And we understand that the Court has undertaken a  
19 detailed review of the papers, and I intend to focus on certain  
20 arguments made by the reorganized debtors in their opposition,  
21 but primarily on the Court's questions in the December 11th  
22 order. And as is obvious, Your Honor, only one objection was  
23 filed in connection with PERA's substantial contribution  
24 application.

25 Your Honor, the efforts of PERA and its counsel over

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1 the eighteen months of these cases prior to the effective date  
2 have been, for the most part, in plain sight. And the Court is  
3 in a position, actually probably the best position, to evaluate  
4 those efforts in the context of this motion. There was,  
5 obviously, material work done outside of the courtroom, but the  
6 thrust of our efforts has been readily apparent to the Court.

7 As the Court indicated at the June 24th hearing on the  
8 debtors' original omnibus claims procedures motion, you've been  
9 dealing with us and the constituency that we've been speaking  
10 for and acting for for a long, long time -- from the outset of  
11 the case -- with respect to all of the important substantive  
12 matters we outline in the motion. The Court actually  
13 referenced much of that, in terms of the plan issues, during  
14 the colloquy during that hearing, so I don't believe we need to  
15 spend much time on that.

16 The fact is that we were never given a seat at the  
17 table, and all that we have done to provide a platform for an  
18 important constituency in these cases, and vindicate their  
19 rights, was accomplished without ultimately jeopardizing  
20 confirmation or the extraordinarily tight time frame that was  
21 required.

22 At the confirmation hearing itself for one of the  
23 sessions, on June 19th, when we advised the Court of the  
24 outcome of the mediation with Judge Newsome, Your Honor noted  
25 the compromises reached with respect to the improved treatment

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1 methodology for securities claimants and congratulated the  
2 parties for solving the problems.

3 But those confirmation problems, Your Honor, several  
4 of which the Court identified as issues of first impression,  
5 and the notice and due process violations, the form of the  
6 notice, the disclosure statement issues, the classification of  
7 the securities claimants, the treatment of those claims, the  
8 attempts to shut down the securities litigation would never  
9 have been resolved, and certainly not resolved in a timely  
10 manner, but for the efforts of PERA and its counsel and their  
11 advocacy.

12 Now, the theme of the reorganized debtors' opposition  
13 appears to be that PERA was solely motivated by self-interest  
14 and that, had we stayed silent, the debtors could have simply  
15 steamrolled securities claimants and wouldn't have had to deal  
16 with those issues at all.

17 But the fact is that a plan was confirmed. Securities  
18 claimants were given an opportunity to file claims, which they  
19 did by the thousands, those claims were recognized and  
20 classified, and their distribution was enhanced through the  
21 significant efforts of PERA and their counsel -- and this is  
22 very important Your Honor -- without costing unsecured  
23 creditors and the fire victims one dollar. So, Your Honor,  
24 that is the lens through which we would ask the Court to view  
25 PERA's application.

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1 Now, let me get to the Court's questions specifically.

2 THE COURT: Yeah, I should give you a clue. The  
3 question comes, in part, from my perception about the  
4 nonbankruptcy world and class action. I realize that lots of  
5 class actions settle, but some of them must not. And if you  
6 went all the way to trial and got a defense verdict, I'm pretty  
7 sure you wouldn't get paid anything, would you?

8 MR. ETKIN: Not by the district court, Your Honor.

9 THE COURT: Right. Right. No, I'm talking about a  
10 hypothetical, not the --

11 MR. ETKIN: Right.

12 THE COURT: -- (indiscernible).

13 MR. ETKIN: Under those circumstances.

14 THE COURT: Right.

15 MR. ETKIN: Not in connection with your standard class  
16 action and how fees are determined in those cases.

17 THE COURT: Right. And so my question and the  
18 predicate here for my question is since nobody -- not a single  
19 claimant has been paid a single penny yet, even if I were  
20 persuaded that your 503 argument was credible on the face of  
21 it, could I award something at a time when none of the  
22 constituents that you speak for have gotten a penny, or haven't  
23 even become entitled to a penny?

24 MR. ETKIN: Well, Your Honor, we believe the answer to  
25 that question is yes because the hypothetical that you pose

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1 involved what would happen in the district court. And the  
2 circumstances here that dictates a 503 and how reasonable fees  
3 are determined is set forth, we believe, in the Bankruptcy  
4 Code. In fact, Your Honor, I think the reorganized debtors'  
5 opposition maintains that the same principles for assessing the  
6 reasonableness of retained professionals' fees should be  
7 applied to substantial contribution applications, and we agree.  
8 We agree with that.

9 So the analysis should comport with Section 330 of the  
10 Bankruptcy Code, which is what the debtors argue and what we  
11 believe should be the case as well.

12 THE COURT: Okay. But think about it. Let's test it  
13 from my point of view. Your claim, if I'm not mistaken, is  
14 upwards of four million -- four-and-a-half million some  
15 dollars. Substantial money. If I awarded that and you were  
16 paid it, and then at some day in the future the defendants,  
17 whether the debtor defendants -- leave aside the officer and  
18 director -- if the defendants never had to pay a penny, then  
19 your efforts would have gone -- it would be a bizarre result,  
20 it seems to me, that you would -- you would get a substantial  
21 contribution that didn't produce any measurable benefit for the  
22 benefit of the people you've acted for.

23 MR. ETKIN: Well, Your Honor, you have to draw the  
24 distinction, I believe, between the claims asserted against the  
25 nondebtor defendants in the district court and the claims that

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1 have been filed, individual claims, all 7,000-plus of them,  
2 that have been filed in the bankruptcy case. Again, those  
3 7,000 claimants and what they recover in the bankruptcy case,  
4 where we do not have a certified class, where we do not have an  
5 order of this Court applying Rule 7023, those claimants move  
6 forward, at least based upon Your Honor's recent ruling which  
7 denied the most recent 7023 application and granted the  
8 debtors' application with respect to ADR procedures, they would  
9 go ahead individually and be resolved individually in the  
10 bankruptcy case, potentially. So it's a very different --

11 THE COURT: (Audio interference) you're not answer --  
12 you're not getting my point. What if they -- the mediation of  
13 them was unsuccessful and it went to the court, the bankruptcy  
14 court, and the court determined that there was no liability?  
15 And so that's why -- I'm not trying to focus on what the actual  
16 district court and the actual action pending in San Jose is;  
17 I'm talking about this case.

18 So your argument here is you have brought about a  
19 benefit for the benefit -- a result for the good of these 7,000  
20 people here. But if all 7,000 of them strike out, then should  
21 their lawyers be paid?

22 I understand your point. You need to use your time as  
23 you wish, not --

24 MR. ETKIN: Well, no, Your Honor, let me address that  
25 straight up. It's Section 330 and Section 503 do not involve



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1 payment on a contingency fee basis.

2 THE COURT: Okay.

3 MR. ETKIN: This is not a contingency case. This is  
4 measured by virtue of what was done, what was accomplished, not  
5 necessarily with the benefit of hindsight, which is what the  
6 cases hold in connection with 330.

7 There are probably many situations where, ultimately,  
8 unsecured creditors' recovery may hinge on post-confirmation  
9 litigation that's brought and the recoveries in  
10 post-confirmation litigation, and that may be successful, but  
11 it may not. But you wouldn't hold off on awarding fees under  
12 503 or under 330 based upon whether it pans out or it doesn't.

13 And quite frankly, Your Honor, the debtors are  
14 offering to mediate individual claims. I would venture to say  
15 that they're not offering to mediate, only to tell each of  
16 these claimants that your claims are worth nothing, go home.  
17 So it's --

18 THE COURT: No, I agree with you, Mr. Etkin. I  
19 understand that. And the debtor has committed, under a  
20 proposal, to make offers. And if even one of those offers is  
21 accepted, then my hypothetical fails because somebody's gotten  
22 paid something.

23 Go ahead.

24 MR. ETKIN: Right.

25 THE COURT: So let's use your time --

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1           MR. ETKIN: Your Honor, utilizing the but-for test,  
2 the bottom line, really, is that absent what we've accomplished  
3 in this case, these 7,000-plus claimants would be guaranteed  
4 zero because they would have never had an opportunity to even  
5 pursue their claims in the case. And of course it's not -- as  
6 set forth in our papers, it's not just what we accomplished on  
7 that score, but it's also given our participation at the  
8 disclosure statement and plan process, which ultimately  
9 enhanced the treatment of securities claims under the plan. So  
10 again, Your Honor, with respect to your first question, we  
11 believe that the answer is yes.

12           But one other aspect of that, Your Honor, is that when  
13 you look at a case like Texaco, which we cite, that court held  
14 that a substantial contribution was appropriate regardless of  
15 whether the efforts were fully successful or not. And in the  
16 American Plumbing case, the contribution can be monetary or  
17 nonmonetary and that the benefits should not be narrowly  
18 confined to dollars and cents. So even though we believe that  
19 our contribution has tangible benefit and significant benefit,  
20 it's not limited to a monetary benefit or a guarantee as to the  
21 outcome.

22           Your Honor, as to your question two, we agree that  
23 substantial contribution in the case is the standard, and  
24 that's the language of 503. And we would look to the Mirant  
25 decision as a prime example of that. We have also discussed in

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our motion and the reply how our efforts have benefitted the estate as well.

Your Honor, benefitting the estate in the confirmation process is not measured by how compliant you are with the will of the debtors and how the debtors want to see the case pan out. Each constituency acts and takes positions for the benefit of their stakeholders. Those positions are hopefully reflected in the final product and, in this case, were reflected in the final product, and the plan was timely confirmed. The fact that we were consistently on the outside looking in just made our job more difficult, quite frankly.

Your Honor, again, on June 5th the Court -- which was one of the confirmation hearing dates -- the Court identified the issues that we had raised, several of the issues that we had raised, as issues of first impression, and that needed to be addressed. And then, after some argument, the Court directed the parties to mediation.

At that June 8th hearing, Your Honor, where you did direct the mediation before Judge Newsome, you referred to these issues as big-ticket items that needed to be mediated and that you wanted Judge Newsome to mediate these issues for the parties, and the sooner the better, and you additionally outlined that you had some concerns over these issues.

Well, we took all that to heart. We engaged in mediation in the midst of a contested confirmation hearing, and

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1 we got each and every issue resolved, save one. And the one  
2 issue that we put before the Court ultimately was not an issue  
3 that we agreed would jeopardize confirmation, and the Court  
4 called balls and strikes with respect to that one issue that  
5 remained after the mediation before Judge Newsome.

6 In terms of question three, Your Honor, we don't  
7 believe that the outcome of the district court action has any  
8 relevance to this motion. I think I touched upon that already  
9 in my earlier remarks.

10 THE COURT: Well, the question was prompted by the  
11 argument from the debtor that you should look to the district  
12 court for your compensation, and so that's --

13 MR. ETKIN: Well, Your Honor, in the district court,  
14 we're litigating against nondebtor defendants, and our recovery  
15 in the district court will be based upon a recovery from  
16 nondebtor defendants. The claims against the debtor are before  
17 Your Honor. They would never have been before Your Honor but  
18 for our efforts during the course of the case.

19 They are claims against the debtor. They are  
20 legislated by the terms of the plan. The recovery is based  
21 upon and governed by the plan provisions, including the  
22 improvements that were negotiated with respect to that  
23 recovery, and they'll be determined, ultimately, by this Court,  
24 subject to any appeals, unless something occurs that we're  
25 currently not aware of.

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1           Your Honor, the claims against the nondebtors will go  
2 forward in the district court and will be resolved before the  
3 district court. They have not been enjoined by the Court,  
4 despite several efforts to do so, and they are going forward.  
5 So there's a rather clear line between the claims against the  
6 debtors and the efforts that were put forward during the  
7 eighteen months of these cases through the effective date,  
8 regarding dealing with the claims, the securities claims  
9 against the debtors, and the treatment of those claims,  
10 ultimately, under the plan.

11           So what happens with respect to nondebtor parties and  
12 recoveries against nondebtor parties, that's what's occurring  
13 before the district court, and that's what the district court  
14 will evaluate, ultimately.

15           THE COURT: Has anything happened since we last met?  
16 District judge decided anything yet?

17           MR. ETKIN: Unfortunately, the answer to that is no,  
18 Your Honor.

19           THE COURT: (Audio interference).

20           MR. ETKIN: We have not gotten any decision --

21           THE COURT: Wow. Okay.

22           MR. ETKIN: -- not from the district court. And it's  
23 been quite some time, but we're still waiting.

24           Your Honor, moving on to your question four. It's  
25 been a while since I've recited the four questions, Your Honor.

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1 THE COURT: Well, question four was more of -- there's  
2 no question mark on number four --

3 MR. ETKIN: No, I know.

4 THE COURT: -- it's just a statement.

5 MR. ETKIN: But I wanted to comment on what I believe  
6 is the point that you're making.

7 The solvency of these estates, Your Honor, created the  
8 opportunity for 510(b) claimants to recover for the damages  
9 that they suffered in connection with their purchase of the  
10 debtors' publicly traded securities. That circumstance, as  
11 Your Honor has noted often, is very much the exception and not  
12 the rule. And absent solvency and the fact that 510(b)  
13 claimants are in the money, our efforts and the issues would  
14 have been quite different, and certainly more limited.

15 But I take your point, Your Honor -- I think -- that  
16 for purposes of 503, the fact that it specifically acknowledges  
17 equity holders as those entitled to seek a substantial  
18 contribution award should mean that stakeholders who are pari  
19 passu with equity holder are likewise entitled to seek a  
20 substantial contribution award.

21 However, I would point out, Your Honor, that  
22 securities claimants are creditors. Their status is not as an  
23 equity holder; that treatment is different under the plan. And  
24 their status as a holder does not determine whether they have a  
25 securities claim or not; it's when they purchased during the

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1 period that's set forth in the claims form that they were  
2 required to fill out.

3 So the fact is that our constituency, our creditors,  
4 the Code just happens to subordinate those creditor claims for  
5 purposes of distribution. So their rights and their recoveries  
6 were very much at stake in these cases, and PERA is obviously  
7 one of those creditors.

8 THE COURT: Okay. And you're about at the  
9 twenty-minute mark, so why don't we reserve your ten minutes  
10 for rebuttal, and I'll let Ms. Liou make her --

11 MR. ETKIN: If I could just make one more point, Your  
12 Honor --

13 THE COURT: Yes, yes, sir.

14 MR. ETKIN: -- which I think is also important, and I  
15 alluded to it earlier.

16 The reorganized debtors' opposition is littered with  
17 references to efforts that they claim solely benefitted PERA.  
18 In particular, they referenced the initial 7023 motion as a  
19 primary example.

20 We addressed that in the briefing. And obviously our  
21 position was that we would've preferred that Rule 7023 apply  
22 and be the means to cure the notice issues and the due process  
23 violations that the Court determined to exist. Those  
24 violations, in fact, were the primary reason why the initial  
25 7023 motion was filed.

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1           So while the Court acknowledged the merits of the  
2 7023 motion, I think you referred to it as a close call at the  
3 time, the Court chose the alternative remedy of extending the  
4 bar date for securities claims.

5           Either way, Your Honor, left to their own devices,  
6 the debtors would have done nothing. And as for PERA's  
7 self-interest, it should be noted that PERA did file a proof of  
8 claim prior to the initial bar date. So PERA did not need the  
9 extended bar date to file its claim, but the 7,000-plus  
10 claimants who filed proofs of claim by the extended bar date  
11 were significantly benefitted by PERA's efforts.

12           THE COURT: Okay. Let's leave it at that. You and  
13 Mr. Dubbs will have ten minutes.

14           MR. ETKIN: Thank you, Your Honor.

15           THE COURT: Ms. Liou, you have the 30 minutes.

16           MS. LIOU: Good morning, Your Honor. Jessica Liou  
17 from Weil, Gotshal & Manges on behalf of the reorganized  
18 debtors.

19           Your Honor, I'd like to start with the first question  
20 and the point that you started with at this hearing because I  
21 think it's a very important question. And it's driven by a  
22 desire to understand the common sense basis for why PERA should  
23 not be entitled to substantial contribution claim.

24           Now, I think the question that you were getting at is  
25 the premise underlying all of the arguments made by Mr. Etkin



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1 and PERA and his counsel, is that they've taken a number of  
2 actions which benefit these particular classes of securities  
3 claimants under the plan.

4           However, they are in the unique situation that  
5 distinguishes them from every other case where a substantial  
6 contribution claim has been granted, where not a single claim  
7 has yet been allowed and determined to be valid in those  
8 classes. And it strikes me as somewhat absurd, and definitely  
9 defying common sense, to allow PERA to have a substantial  
10 contribution claim on account of actions it's taken to  
11 "benefit" this class when it's not clear yet whether the class  
12 actually has received a benefit.

13           THE COURT: Well, but what about my question to Mr.  
14 Etkin. I mean, you're going to -- you have persuaded me to  
15 adopt a procedure where you're going to be making offers. So I  
16 presume you're making offers that could be accepted, so  
17 everybody who accepts your offer is going to be benefitting,  
18 isn't it?

19           MS. LIOU: Absolutely. But I think you know as well  
20 as anyone that accepting orders through a mediation and  
21 compromising your own claim does not give you a substantial  
22 contribution claim under the case law. And we can quote  
23 specific cases that say that including your case, Your Honor,  
24 in PG&E, I believe where you say "settlement and settlement  
25 conferences are part of the fabric of bankruptcy". I'll also

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remind you that those procedures were procedures that the  
debtors' proposed. And we propose them precisely so that we  
could move ahead and try to expedite the settlement process.

But again, the standard for substantial contribution  
is one where PERA and its attorneys are held to a very, very  
heavy burden, an incredibly high standard. It's substantial  
contribution, which means that their actions have to be rare,  
extraordinary. And the actions that they've taken in these  
cases are nothing different than what you would expect any  
creditor to take in a case, such as participating in a  
disclosure statement process, participating in a plan process,  
and commenting on a bar date noted for disclosure; and I can go  
through that in a lot more detail in a minute, Your Honor.

I think, Your Honor, just to jump to your question  
number 2, we completely agree that the standard for determining  
whether or not there is a substantial contribution claim is  
taking a look at the benefit to the estate.

Our terminology, benefit to the estate as a whole,  
wasn't even --

THE COURT: But the statute doesn't say benefit of  
the estate. It says "substantial contribution".

MS. LIOU: That's right, Your Honor.

THE COURT: Period. The phrase --

MS. LIOU: That that can be right, how --

THE COURT: -- to the estate isn't there.

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1 MS. LIOU: I completely understand.

2 THE COURT: Okay.

3 MS. LIOU: But as you know, because you've  
4 acknowledged this in your decisions as well, dealing with  
5 substantial contribution issues, the statute doesn't actually  
6 define what substantial contribution means.

7 THE COURT: Right.

8 MS. LIOU: And so the caselaw that is developed  
9 around that terminology has very consistently held that the  
10 appropriate standard is benefit to the estate, and I think  
11 you --

12 THE COURT: Well, but Ms. Liou, your brief -- or Mr.  
13 Slack signed it -- but the phrase, as a whole must've been  
14 repeated eight times. But can't there be a benefit to some  
15 section, some portion of the estate to still be a contribution?  
16 Because if not, then what did Congress mean when it said that  
17 substantial contribution claims can be asserted by equity  
18 holders. Well, when do equity holders benefit creditors? Not  
19 often.

20 MS. LIOU: Well, I think you can always benefit  
21 equity holders when you determine that the actions that a party  
22 has taken has resulted in either an increase in the residual  
23 value available to equity holders or somehow avoided the  
24 incurrence of substantial litigation costs, time and delay,  
25 that would otherwise reduce the residual value entitled -- that

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equity holders would otherwise be entitled to.

I'll also note that there are cases that do say that to the extent that the actions taken by a creditor benefit just one singular class of similarly situated creditors, then that contribution should be given even lighter weight. And I think that's an acknowledgement of the fact that when most of the actions taken by a particular creditor are driven by self-interest. And it's not the motivation that matters, Your Honor, don't mistake me, right, that's not what I am getting after. It's just that part of the test is, if you're taking actions that you otherwise would have taken to defend your own interests and you're not doing anything out of the ordinary, then you haven't really taken actions that rise to the level of substantial contribution.

Your Honor, I do think it is worth looking at the facts here to help answer number two. Let's look at the arguments that PERA has made.

They focused most of their substantial contribution claim on the actions they've taken in connection with the bar date, plan confirmation, and the disclosure statement process. Well, let's look at the bar date process.

PERA asserts that they are the direct cause of thousands of securities action claimants being able to file proofs of claim, and receiving due process. Well, the facts in the record demonstrate otherwise.

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1           The facts in the record demonstrate, including  
2 through the declarations that PERA attached in support of its  
3 motion for substantial contribution, that Mr. Dubbin, Mr.  
4 Etkin, Mr. Michelson (sic) at their firm, received a copy of  
5 the bar date motion in May 20 -- '19, May 2nd, 2019, reviewed  
6 it, and actively chose not to file an objection to the bar date  
7 motion. It's like --

8           THE COURT: You know I've got to ask you -- you were  
9 here early in the case, and so was I, and so was Mr.  
10 Karotkin -- if PERA had never made the 7023 motion at all, what  
11 would have happened to the securities claimants?

12           MS. LIOU: They would have kept their claims.

13           THE COURT: That's right. That's right. They  
14 would've been out. The door to the bankruptcy court would have  
15 been closed because the debtors didn't open it. Am I to ignore  
16 that?

17           MS. LIOU: No. I think, Your Honor, it's important  
18 to keep in mind that we're talking about actions that have to  
19 be the direct -- directly lead to any benefit. And all I'm  
20 saying, Your Honor, is that the direct cause of the benefit to  
21 those securities claimants is you. You decided to deny PERA's  
22 7023 motion, which is the cause of the extension and  
23 application of the bar date.

24           THE COURT: There's something --

25           MS. LIOU: Specifically, with the --

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1 THE COURT: There's something wrong with this  
2 picture, Ms. Liou. I denied it because I had two unhappy  
3 alternatives. But I would've had no alternative if PERA had  
4 never made its motion. The debtors -- and I don't want to  
5 personalize this -- the debtors didn't do one thing to give the  
6 securities claimants an opportunity to file a proof of claim;  
7 in fact, the reverse. It said, door's closed. How can I  
8 ignore that? And how can I ignore the fact that the but-for,  
9 and the reason why there are 7,000 folks at the table, is  
10 because PERA made a motion that they lost.

11 MS. LIOU: Your Honor, I want to clarify one thing.  
12 I don't think that's --

13 THE COURT: Okay.

14 MS. LIOU: -- (audio interference) at all.

15 THE COURT: Okay.

16 MS. LIOU: What I meant by that is, look. There were  
17 securities debt claims. The securities debt claims would have  
18 recovered in full to whatever extent they would have been  
19 allowed. They fell within the general unsecured class under  
20 the claimant's plan. By separately breaking them out, we were  
21 simply acknowledging that they were a different class of claims  
22 that could be treated differently under the plan.

23 But I don't think that there would've been any  
24 substantive differences to the treatment. The fact of the  
25 matter is, in a fully solvent case, you would be able to get

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1 your claim paid in full, to the extent that it would be  
2 determined to be allowed, and those were claims. All holders  
3 of pre-petition claims had to file proofs of claim by the bar  
4 date. Those were holders of pre-petition claims.

5 THE COURT: Well, they didn't have to file a claim if  
6 they were deemed allowed, but the point is that they weren't  
7 even given an opportunity to file a claim. The notice of the  
8 original bar date specifically said don't file a claim, right?  
9 Don't file a claim.

10 MS. LIOU: I don't believe that that's what it said,  
11 but --

12 Mr. Karotkin?

13 THE COURT: Well, I don't remember --

14 MR. KAROTKIN: Your Honor, that's not -- Your Honor,  
15 let me just interject. That's not what it said. What the  
16 initial bar date order said, Your Honor, was that if you had a  
17 pure equity claim, a pure equity claim, you're not obligated to  
18 file the claim. It in no way said that people who have, as Mr.  
19 Etkin acknowledged, a monetary damage claim based on equity,  
20 were not required to file a claim. And we will note, Your  
21 Honor, we believe that notice -- and we've consistently said  
22 that, that notice of the original bar date was totally in  
23 compliance with due process. You obviously disagreed. People  
24 were given the opportunity to file claims.

25 And by the way, Your Honor, Mr. Etkin and his

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1 colleagues actively objected to your suggestion, actively  
2 objected to your suggestion, of an extended bar date and indeed  
3 appealed the whole thing, and now they want credit for it.

4 THE COURT: Okay. Okay. Back to Ms. Liou.

5 MS. LIOU: Yeah, Your Honor, so I think we can move  
6 on. But our only point there was that the record very clearly  
7 demonstrates that the application and extension of the bar date  
8 to securities claimants was not a direct result of PERA's  
9 efforts. It was in spite of their efforts to oppose that  
10 direct notice.

11 Moving onto the disclosure statement, approval, and  
12 plan confirmation process, you know, PERA alleges that its  
13 objections to the disclosure statement and the Chapter 11 plan  
14 resulted in changes to treatment and classification that should  
15 be viewed as providing a substantial contribution in these  
16 cases because they benefitted securities claimants. It also  
17 asserts that it facilitated the timely confirmation of the plan  
18 by resolving a plan objection and otherwise working with the  
19 debtors through the court-ordered mediation. Again, this is  
20 not true. Let's look at the facts.

21 PERA did object to the disclosure statement, and so  
22 did 20 other parties. PERA did object to the plan, and so did  
23 27 other parties. PERA then prosecuted its plan objection down  
24 to the wire. And the fact that PERA then engaged in court-  
25 directed mediation to resolve certain of its objections, again,



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is irrelevant to the determination of substantial contribution  
claim.

If you were to accept, Your Honor, PERA's argument,  
and extend it to its logical conclusion, then any creditor, any  
equity holder that objects to approval of a disclosure  
statement or confirmation of a plan that results in some  
changes that could be viewed as a benefit for some folks, and  
then also decides to resolve a portion of its objection, could  
be entitled to a substantial contribution claim. And I think  
it's very clear that this is not the law.

In fact, as I mentioned before in PG&E, you mentioned  
that settlement and settlement conferences are part of the  
fabric of bankruptcy. A creditor cannot establish a  
substantial contribution claim for suggesting or supporting a  
court-supervised settlement conference; that's clear. Those  
are your words.

In American Plumbing, the Court there noted that  
expected or routine activities in a Chapter 11 case do not  
constitute substantial contribution. Expected or routine  
activities in the guise of extensive or active participation  
also cannot substantiate substantial contribution. Examples of  
these activities include proposing agreeable terms through  
negotiation and commenting on the disclosure statement and the  
plan of reorganization. This is also consistent with the  
holding in the Standard Metals case, which we have included a

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summary of in our brief as well.

And there's a reason that the law provides these constraints, Your Honor. To hold otherwise effectively opens the floodgates for potential claims, substantial contribution claims, from basically 47 other parties who also participated in the disclosure statement and plan confirmation process.

Numerous courts agree that the integrity of 503(b) can only be maintained by strictly limiting compensation to extraordinary creditor actions, which then lead to a significant and tangible benefit. What can be more ordinary and expected in a Chapter 11 process than creditors participating in the plan process and the disclosure statement of process, to try to improve upon the treatment of claims in their own class or their own claims, and whatever consider they are to receive under a plan. I'll note also that any benefits that other securities claimants may have received were only incidental to the benefits that PERA obtained by prosecuting its interest in its objection.

THE COURT: I'm sorry, would you just repeat that again please? I just did not -- I'm trying hear you.

MS. LIOU: Sure, Your Honor. That any benefits that other securities claimants may have received were only incidental to the benefits that PERA obtained by prosecuting its interest in its objection. And I think that you, as well as -- you will know better than anyone else that there are

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1 cases that note that ancillary benefits, again, do not rise to  
2 the level of substantial contribution.

3 Your Honor, we've mentioned this before, but I think  
4 it bears repeating again, that this is a very high standard.  
5 And if you look at the circumstance where courts have actually  
6 found substantial contribution, they basically fall in one of  
7 three main buckets: You have creditors who have acted as plan  
8 proponents, creditors who have provided exit financing or were  
9 instrumental in obtaining third-party sources of financing on  
10 which a plan was dependent, or a creditor who has significantly  
11 compromised its own claim or litigation rights to increase the  
12 funds available for distribution to other stakeholders, and  
13 that hasn't happened.

14 I know PERA likes to measure itself against a  
15 subrogation -- subrogation claimants, the tort claimants, the  
16 noteholder claimants, and also the public entities in these  
17 cases, arguing that their efforts are tantamount to the kinds  
18 of compromises that those parties made in this case. That  
19 cannot be further from the truth.

20 Under those settlements, as you know, Your Honor, the  
21 subrogation RSA for example, twenty billion dollars of claims  
22 settled and liquidated at eleven billion dollars; an  
23 eight-billion-dollar discount agreed to by those holders. That  
24 settlement also dispensed with potentially costly and lengthy  
25 estimation proceedings, saving the estate significant money.

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1 Same thing with the tort claims RSA. Over 36 billion  
2 dollars of asserted claims, settled for approximately 13.5  
3 billion in value. The resolution included a stay of the  
4 estimation proceedings, and a settlement of the Tubbs trials,  
5 which were proceeding in state court. The noteholder RSA  
6 settled the treatment of pre-petition-funded debt, make-whole  
7 premium entitlement, and other issues, which implicated over  
8 five billion dollars of potential claims.

9 THE COURT: Well, but none of them made 503 motions.  
10 None of those three came in with 503 motions.

11 MS. LIOU: Right.

12 THE COURT: What would you have done if they had?

13 MS. LIOU: Yeah, that's right, Your Honor. And in  
14 addition, that RSA reduced PG&E's long-term borrowing costs by  
15 a billion dollars. It also provided certainty for over eighty  
16 percent of the debtors' exit financing needed to emerge from  
17 the Chapter 11 cases. It settled multiple pending litigations,  
18 including the opposition to the exit financing motion, the  
19 reconsideration of the tort claimants' RSA, and subrogation  
20 claimants' RSA filed by the noteholders.

21 Same thing with the public entity settlement, where  
22 billions of dollars of claims were settled for one billion  
23 dollars avoiding the need for another costly and potentially  
24 lengthy --

25 THE COURT: Yeah, but again, you keep making a list

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1 of things of people who didn't file 503 motions. Therefore,  
2 why are they relevant to whether PERA should get one or not?  
3 They were --

4 MS. LIOU: Well, the --

5 THE COURT: -- major developments, there's no  
6 question, they were major developments.

7 MS. LIOU: Yes.

8 THE COURT: But no one can --

9 MS. LIOU: Well, I am --

10 THE COURT: -- no one cannot be paid for them.

11 MS. LIOU: -- I'm talking -- yeah.

12 THE COURT: Huh? What?

13 MS. LIOU: Your Honor, sorry, I did not mean to  
14 interrupt.

15 THE COURT: It's all right. Okay.

16 MS. LIOU: The only reason I raised them is because  
17 PERA is drawing a comparison of their action to the actions  
18 taken by those other parties and arguing that because those  
19 other parties agreed to a consensual resolution with PG&E, and  
20 PG&E was willing, under those consensual arrangements, to pay  
21 some portion of the professional fees and costs and expenses  
22 incurred by those parties, that somehow should act as a  
23 transitive principle in these circumstances to force PG&E to  
24 pay for the costs and associated expenses incurred by PERA, and  
25 that's just not true, right?

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1           It all ties back to the fact that under the caselaw,  
2 PERA hasn't done anything that rises to the level where  
3 substantial contributions would be found. It has not acted as  
4 a plan proponent. It has not provided financing or funding for  
5 these plans. It has not chosen to settle and liquidate its own  
6 claims or give up litigation causes of action that somehow  
7 provide additional value distributable to other securities  
8 claimants, or even residual value available to the equity  
9 holders.

10           Your Honor, I think the last point that I would like  
11 to make in this regard is just the observation that you made in  
12 PG&E, which is in a complex case and a difficult case like this  
13 one, where so many parties made so many contributions, it is  
14 difficult to single out the contributions of any particular  
15 party as substantial. And that is true, absolutely true, in  
16 this case, as well.

17           THE COURT: And you're talking about the Palo Alto  
18 decision which was from day one, Palo Alto was in on its own,  
19 and never spoke for anyone else. So you at least concede that  
20 that's a fact difference, wouldn't you?

21           MS. LIOU: However, I do think that Palo Alto did  
22 make the argument that its actions not only benefitted itself,  
23 but benefitted other people, so --

24           THE COURT: Well, I don't remember that, i.e., it may  
25 be that that's happened, I just don't remember that. That's

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1 okay, go ahead. I mean, they were different. They were  
2 certainly different.

3 But that's the -- am I correct, Ms. Liou, that it was  
4 my decision in Palo Alto PG&E is the only thing you're  
5 referring to, right?

6 MS. LIOU: Yeah, that --

7 THE COURT: You're not --

8 MS. LIOU: -- that's correct.

9 THE COURT: I didn't make some other decision --

10 MS. LIOU: Your decision in Palo Alto PG&E, I'm  
11 sorry, Your Honor, yes.

12 THE COURT: Right. No, that's right. I thought so  
13 when it was mentioned in the briefs, and I thought I remembered  
14 that -- I would've remembered anybody else that came up, but I  
15 don't think it did. Okay. I got it.

16 But you have more time if you want. You don't have  
17 to use it but --

18 MS. LIOU: Yeah. Your Honor, I think it probably  
19 makes sense to address your questions 3 and 4 very briefly, and  
20 then see what else Mr. Etkin wants to add.

21 So I think your question number 3, How does the  
22 outcome of the district court action -- and I'll paraphrase --  
23 have any relevance to whether plaintiffs can recover anything  
24 from the reorganized debtors for substantial contribution to  
25 these cases.

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1           Similar to the point that we started with, our view  
2 is that a lot of the actions that PERA is taking are, PERA  
3 admits, actions that it takes as its fiduciary on behalf of its  
4 client. And we expect that as the district court proceedings  
5 continue to proceed, and if PERA were to come to the point  
6 where there is a judgment in their favor, they would be  
7 requesting fees and expenses, and there is the risk that there  
8 would be double-dipping there.

9           THE COURT: Well, why would there be? Why would  
10 there be? They can't -- I doubt that Mr. Etkin is going to go  
11 in front of a district judge, in a case with no debtor  
12 defendants, and argue that he helped things by a claims bar  
13 date or plan confirmation or all of the things that you have  
14 faulted him for here because he'd get laughed out of court. To  
15 say that the class that are involved in -- excuse me, that the  
16 defendants who are not debtors should pay for things that have  
17 to do with this case.

18           In other words, what I -- and I'm not saying it very  
19 well -- to me, the bankruptcy case that happened here is quite  
20 different from whatever will happen there, and they're two  
21 different arenas and two different measures of value, right? I  
22 mean, how do you get them --

23           MS. LIOU: Well --

24           THE COURT: -- how do you merge the two concepts?

25           MS. LIOU: Yeah, I'm not so sure about that, Your



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1 Honor, because I think that when it comes time for an  
2 application for perspective for the payment of fees and  
3 expenses, I haven't heard anything from Mr. Etkin, or PERA's  
4 counsel, indicating that they would not seek any kind of  
5 compensation in connection with the district court actions, on  
6 account of any of the work that they're doing that could be  
7 related to the Chapter 11 case.

8 THE COURT: Well, I mean but do you think that they  
9 could make the argument with a straight face that somehow they  
10 should be paid in an action against officers and directors for  
11 things that they did, from their point of view, to improve the  
12 outcome for the participants in this case? I mean, I guess  
13 they could make the argument --

14 MS. LIOU: Yeah, I --

15 THE COURT: -- but I don't know that they've  
16 committed to making it.

17 MS. LIOU: No. I know it's not an argument I would  
18 make, but I can't --

19 THE COURT: Okay.

20 MS. LIOU: -- speak for PERA.

21 THE COURT: Okay. All right. Anything else?

22 MS. LIOU: I don't think so, Your Honor.

23 THE COURT: Okay.

24 MS. LIOU: I think on your question/statement for  
25 number 4, I don't think that there's any disagreement from us,

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any particular observation.

THE COURT: Yeah, well, what struck me as (audio interference) to so many of the decisions are benefit to impact on creditors. And sure, it's easy. It's easy in a case where solvency is not an issue -- I mean, where insolvency is given, that if you benefitted somebody else, that might be compensable, but it doesn't seem to fit the same analysis in a solvent estate. That didn't -- you made the point on that, and I don't -- let's leave it at that. Thank you very much, Ms. Liou.

MR. KAROTKIN: Your Honor, can I mention --

THE COURT: Mr. --

MR. KAROTKIN: -- just two --

THE COURT: Well --

MR. KAROTKIN: -- things?

THE COURT: -- you can use a little of your colleague's time.

MR. KAROTKIN: Okay. Thank you. I'll be brief.

A couple of things. Number one, for Mr. Etkin to suggest that they were instrumental in achieving the June 30th confirmation decision and that but for their mediation, that would've never occurred, that's preposterous. You made it abundantly clear, Your Honor, throughout the case, and particularly at the confirmation hearing and, Your Honor, with respect to their objection, you were not going to let that hold

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up the June 30th date. They don't deserve any credit for that,  
they're not entitled to --

THE COURT: But they haven't held it up either,  
right? In other words, if they are successful on their  
appeal --

MR. KAROTKIN: They were not --

THE COURT: -- it doesn't affect --

MR. KAROTKIN: -- they would have never held it up.  
They would have never held it up.

THE COURT: Right.

MR. KAROTKIN: Impossible.

THE COURT: Okay.

MR. KAROTKIN: Okay? Moreover, if you look at what  
they did throughout the case, it's basically a string of losing  
efforts. They opposed your bar date notice. They lost 723  
(sic). They lost the renewed 723. They lost the ADR. Their  
confirmation objection was effectively just resolved, like  
anything else that's resolved. As Ms. Liou said, if you  
resolve a confirmation objection, you're entitled to a  
substantial contribution claim? I don't think so.

But let me suggest something, Your Honor. If you're  
inclined to consider this, and I don't think there's any basis  
for it, I would suggest that you defer consideration of this  
motion until we see what happens in the case with respect to  
the claims that are filed, with respect to the district court

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1 action in the motion to dismiss, which addresses the legal  
2 history --

3 THE COURT: Well, I may have retired by then.

4 MR. KAROTKIN: I will certainly be retired by then,  
5 but without prejudice, let's wait a little while to see what  
6 happens.

7 THE COURT: Well, but again, Mr. Karotkin --

8 MR. KAROTKIN: We don't have to do this.

9 THE COURT: Mr. Karotkin, what if tomorrow, the  
10 district court granted the motion to dismiss the district court  
11 action, out --

12 MR. KAROTKIN: Then --

13 THE COURT: -- threw it out, would that -- what would  
14 happen to the argument that PERA's making in this case, for  
15 their contribution here?

16 MR. KAROTKIN: Your Honor, it would certainly address  
17 the issue you raised at the beginning of the case as to the  
18 validity of these claims. It would certainly address that.  
19 And that's a good idea. Let's wait a little while to see  
20 what --

21 THE COURT: But what would happen --

22 MR. KAROTKIN: -- happens --

23 THE COURT: But Mr. Karotkin, what would happen to  
24 the ADR procedure, and the offer and acceptance proposal that  
25 you persuaded me to go with? Does that mean it's off the

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1 table?

2 MR. KAROTKIN: It wouldn't be off the table, but it  
3 would certainly limit things before Your Honor and limit the  
4 validity of these claims in a big way, in a big way. And what  
5 is the harm of waiting a few months to see what happens without  
6 prejudice --

7 THE COURT: Well --

8 MR. KAROTKIN: -- to the renewal of the motion?

9 THE COURT: Mr. Karotkin, I'm not in the business of  
10 faulting and criticizing my fellow judges, even if they are  
11 Article III judges, or even if they're not Article III judges,  
12 but when a motion to dismiss has been under advisement for ten  
13 months, I'm not very sanguine about taking a little bit longer  
14 because it might be ten more months, or twenty more months. I  
15 have no control over that.

16 MR. KAROTKIN: It might, and -- it might, Your Honor,  
17 and it might not.

18 THE COURT: Yeah, right.

19 MR. KAROTKIN: And to defer this for some period of  
20 time -- look, it can always be revisited.

21 THE COURT: Okay. Mr. Etkin, you have closer for ten  
22 minutes, or unless you want Mr. Dubbs to join you. Oh, wait,  
23 you've got to turn your mic back on Santa Claus. There you go.  
24 No, Mr. Etkin, you turned your camera off, and left your mic  
25 off, so -- all right. There's your -- now, turn your mic --

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1 there you go.

2 Now, which of you is going to make the closing  
3 argument?

4 MR. ETKIN: I'll start us off, Your Honor, and if Mr.  
5 Dubbs want to add anything, I'm sure he won't be bashful.

6 But some of the things I just heard, Your Honor, are,  
7 frankly, downright offensive. I don't think we ever took the  
8 position that but for our efforts, the plan wouldn't have been  
9 confirmed. That's not the point we've raised at all. Mr.  
10 Karotkin is prone to hyperbole, but that's a little over the  
11 top.

12 We took the position that we helped in the process.  
13 We aided the process. We raised issues that the debtor  
14 would've ignored as it relates to 7,000-plus claimants, not  
15 just a few people, stragglers who came in, but 7,000-plus  
16 claimants who asserted in excess of six billion dollars' worth  
17 of claims. That's a significant constituency in anybody's  
18 case.

19 And not like the few cross-section of bondholders  
20 from the case that Ms. Liou cited, where the efforts also cost  
21 unsecured creditors some recovery. That did not happen here.  
22 As I said, Your Honor, before, unsecured creditors, fire  
23 victims, subrogation claimants, it didn't cost them a dime, and  
24 wouldn't cost them a dime with respect to the substantial  
25 contribution award that we're seeking.

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1           And Your Honor, the idea of now relitigating the  
2 issues with respect to the original 7023 motion, that's  
3 revisionist history at its worst. Your Honor made a decision.  
4 Your Honor has indicated that while we did not achieve 7023  
5 recognition, the extended bar date was the alternative, as the  
6 Court pointed out; that you chose to remedy the due process and  
7 notice violations that the Court found. To relitigate that  
8 now, is just not appropriate. The law is what the law is.

9           THE COURT: What do you think -- wait a minute.

10          MR. ETKIN: The case --

11          THE COURT: Wait a minute, Mr. Etkin.

12          MR. ETKIN: The determination was what it was.

13          THE COURT: Mr. Etkin --

14          MR. ETKIN: I'm sorry.

15          THE COURT: -- what do you think -- no, I -- what do  
16 you think would've happened if you had never filed your  
17 original 7023 motion?

18          MR. ETKIN: 7,000-plus claimants would've been out of  
19 luck.

20          THE COURT: But what would've happened to them, under  
21 the plan? In other words, leave aside --

22          MR. ETKIN: Under the plan, they would have gotten --

23          THE COURT: -- what I am asking you to answer is, if  
24 I accept the argument that if you had not filed the original  
25 motion, the debtor wouldn't have sought a new bar date, so what

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1 would've been the fate of all of the class -- the three  
2 classes, both bondholders, and equity holders? What would've  
3 been their fate?

4 MR. ETKIN: They would not -- their fates would have  
5 been that they would've been disenfranchised in the case  
6 because they would not have filed proofs of claim by the  
7 original bar date. And again, I'm talking about securities --

8 THE COURT: What would they have been --

9 MR. ETKIN: -- claimants.

10 THE COURT: -- would their debts have been  
11 discharged?

12 MR. ETKIN: Well, of course their debts would've been  
13 discharged, Your Honor.

14 THE COURT: Well, would they? Would they?

15 MR. ETKIN: Unless somebody came in down the road and  
16 made the argument that we made that they were denied  
17 constitutionally directed due process.

18 THE COURT: No, let's break the -- let's forget  
19 510(b), the statutory subordination, and recognize that the  
20 universe of people that you are speaking for are either  
21 bondholders or shareholders. So what would've happened to a  
22 bondholder who claims to have been defrauded, or had been an  
23 equity holder who claims to have been defrauded, if there had  
24 never been your motion, and therefore no extended bar date?  
25 Would the debts be discharged? Would they be out there free to



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1 be pursued now, post-bankruptcy as not be affected by the plan?

2 MR. ETKIN: That would be -- Your Honor, ultimately  
3 that would be premised on whether they decided to take  
4 affirmative action on their own, having never received notice  
5 of the bar date as it relates to their securities claims, but  
6 to the extent that they're holders, Your Honor, of equity, or  
7 holders of bonds, those claims would not have been impacted.  
8 It's solely the securities claims that would have been impacted  
9 because without a proof of claim filed in connection with the  
10 securities claim, whether by virtue of being a holder or not  
11 being a holder, is not relevant to the determination of whether  
12 they purchased during the class period, so --

13 THE COURT: Right, it's whether they suffered,  
14 whether they were defrauded, to use the term generally; not  
15 whether they were a bondholder, or a shareholder, but whether  
16 they were defrauded, right?

17 MR. ETKIN: Whether they were victimized by a  
18 violation of the securities law, Your Honor.

19 THE COURT: Okay. So if one of those 7,000 people  
20 never knew about the bar date because they never got served,  
21 and your motion and the follow-up claims bar date had never  
22 happened, you believe those people, whether they were equity  
23 holders or bondholders, they would be out and discharged?

24 MR. ETKIN: I believe that they would be, unless they  
25 came back in front of Your Honor and litigated the very issue

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that we litigated in (audio interference).

THE COURT: Well, no, I understand but that's another hypothetical. What your point is that the debtors didn't do anything except be reactive to your motion, and that even though you lost the motion, it led to the debtor doing something that facilitated 7,000 folks getting to file claims. Isn't that your theory?

MR. ETKIN: That's not a theory, Your Honor, that's a fact.

THE COURT: Okay. Well, okay.

MR. ETKIN: And Your Honor, the alternative remedy that the Court fashioned was a remedy to deal with the issues that we brought to light in connection with the 7023 motion. We may not have been successful in convincing the Court at the time to employ a Bankruptcy Rule 7023 --

THE COURT: Right. Right.

MR. ETKIN: -- but the bottom line, as the Court has previously recognized, was that the bar date was extended, and these folks got the opportunity to file claims. Without that opportunity, they would've had nothing, and they wouldn't have been able to proceed, absent some kind of effort post-confirmation, claiming that they're not bound by the bar date.

THE COURT: Well, okay.

MR. ETKIN: Okay.

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1 THE COURT: But I mean that, again, isn't what we're  
2 talking about. If somebody beyond the first 7,000 shows up  
3 tomorrow and says I want in, that -- we'll deal with that  
4 later.

5 MR. ETKIN: Well --

6 THE COURT: You're speaking here on behalf of the  
7 benefit of your efforts that led to those 7,000 folks getting  
8 invited into file their claims. Okay.

9 MR. ETKIN: That's correct, Your Honor, and then  
10 enhancing their potential recovery. And the idea of sitting  
11 around -- I have never -- I've never seen, although the debtor  
12 argues that 330 is applicable, I've never seen a situation  
13 where folks were told that they should wait to see the outcome  
14 of litigation or outcome of claims before you can evaluate  
15 whether there was benefit bestowed in connection with the  
16 efforts.

17 As I said previously, Your Honor, that's measured at  
18 the time that the services were rendered, according to the  
19 debtors' own theory in their papers. That's not --

20 THE COURT: Well, that's certainly a very fundamental  
21 concept that's well-established in Section 330. And listen, I  
22 used to be a debtors' lawyer, and I lost a lot of motions for  
23 relief from stay, but I still thought I could get paid for  
24 making good faith motions to make them.

25 But the point is that on the other hand, wouldn't you

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1 agree that if the district court tossed the entire action out  
2 tomorrow, it wouldn't be good news for your side, even in this  
3 503 context, would it?

4 MR. ETKIN: Your Honor, I don't know how much of an  
5 impact it would have in a 503 context, but I can certainly tell  
6 you that it would not be welcome news, but that's what  
7 appellate courts are for, Your Honor.

8 THE COURT: Right. No, I understand.

9 MR. ETKIN: And it wouldn't be the first time that a  
10 securities complaint was dismissed with leave to replead, and  
11 then you're back in the game again.

12 So a lot of different things could happen. There are  
13 several different hypotheticals. We're dealing with the here  
14 and now and what was accomplished in these cases. And the  
15 parade of losses that Mr. Karotkin seems to like to talk  
16 about -- several of which are not even involved in the 503  
17 application because they occurred subsequent to the -- to the  
18 period reflected by the 503 application -- but we did succeed  
19 with respect to the 105 injunction, we did succeed with respect  
20 to the derivative action.

21 I would say that we did succeed with respect to the  
22 7023 motion, in terms of preventing a large swathe of claimants  
23 from being disenfranchised in this case, and we took that  
24 forward through confirmation. The treatment was enhanced. The  
25 issues, which the Court itself characterized as unique, were

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1 resolved, were mediated -- save one, which the Court ultimately  
2 decided -- and did not impact on confirmation.

3 Your Honor, I think that the efforts and the results  
4 are self-evident, and the idea that Ms. Liou is talking about  
5 double-dipping before the district court -- out of one side of  
6 her mouth is the fact that there's a risk of that; out of the  
7 other side of her mouth is that she can't speak for PERA, but  
8 she chose to anyway, in terms of what we would do.

9 I'd prefer to think, Your Honor, that to the extent  
10 that there was, as there should be in our case, a 503 -- the  
11 granting of the 503 application, that that would -- that  
12 whatever fees were awarded, at the very least, would dilute  
13 less the recoveries of these claimants down the road. But  
14 there would be no double-dipping, and the idea that --

15 THE COURT: Well, but what --

16 MR. ETKIN: -- that's even suggested is offensive,  
17 Your Honor.

18 THE COURT: What you're saying is that of you ever  
19 get to stand in front of the district court in San Jose to get  
20 paid, you're not going to tell the district judge you did a  
21 great job in getting the disclosure statement straightened out  
22 or the claims bar date extended in the bankruptcy court. I  
23 presume you wouldn't do that.

24 Okay. Anything else? Because we're just about at  
25 our agreed time.

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1 MR. DUBBS: Your Honor, if I may, just a point of  
2 personal privilege.

3 THE COURT: Yes, sir, Mr. Dubbs. If you could state  
4 it for the record. I need your name on the record.

5 MR. DUBBS: Yes, Your Honor, Thomas Dubbs for PERA.

6 Just on the issue of double billing, we have separate  
7 accounting for ours between the bankruptcy case and the  
8 district court case. So the odds of any time being recorded,  
9 let alone being submitted to Your Honor that was really  
10 district court case or vice a versa, is highly unlikely, and I  
11 think Your Honor should appreciate that the odds of me going  
12 before a district court and having time entries that say  
13 discussion with Judge Newsome about 510(b) would be very-well  
14 received by the district court.

15 Beyond that, on the point of the discharge or not.  
16 In addition to the discharge, you have a very broad plan  
17 injunction. So even if there wasn't a technical discharge,  
18 there would be a preclusion of any other action, assuming that  
19 the plan injunction was similar to the one that was finally  
20 entered by the Court.

21 And finally, at this point, one should keep in mind  
22 that on the district court side, number one, there are  
23 different policy choices that have been made. And one of the  
24 policy choices that have been made is that if we prevail or get  
25 a settlement in the district court, our fees will be based upon

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1 at least in the Ninth Circuit, a presumptive twenty-five  
2 percent of whatever the pot is. They're not based upon our  
3 hourly rates, which is the standard here.

4 So what's at stake here, and the risk-reward, even in  
5 the event of a loss there, it's different because the value of  
6 a win there is worth more.

7 And in any event, the district court has before it  
8 issues dealing with the duties and liabilities of the directors  
9 and officers, and the duties and liabilities of the  
10 underwriters, and yes, it's intertwined with what's before Your  
11 Honor, but it is separate at the same time.

12 So even if that case went away, it depends upon how  
13 it went away, and when it went away, and I doubt it's going to  
14 go away soon. Thank you for your time. And again, I apologize  
15 (audio interference) --

16 THE COURT: And I'm taking my earphones off because I  
17 don't have to hear you anymore, because I'm not going to -- I  
18 don't need any more argument.

19 I want to thank you, Ms. Liou, Mr. Karotkin, Mr.  
20 Dubbs, Mr. Etkin, for your argument and presentation. It will  
21 come as no surprise to you, I'm going to take the matter under  
22 advisement and do my best to do it fairly quickly, but no  
23 promises.

24 And so with that, I'll wish you all happy holidays,  
25 and stay well, and conclude the hearing. Thank you very much.

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1 MR. DUBBS: Thank you.

2 MR. KAROTKIN: Likewise, Your Honor.

3 MR. ETKIN: Thank you.

4 MR. KAROTKIN: Have a good holiday.

5 (Whereupon these proceedings were concluded)

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## C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ COLIN RICHILANO

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Date: December 16, 2020

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